S.B.CRIMINAL REVISION PETITION NO.927/2007
(Hanuman Ram Vs. State & Ors.)

Date of order : 25.9.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Vishal Sharma, for the petitioner.
Mr. Vishnu Kachchwaha, PP.
Dr. S.S. Jodha, for non-petitioner.

By way of filing present revision petition, the petitioner has challenged the order impugned dated 22.8.2007 passed by Addl. District Judge (Fast Track), Parbatsar Camp Makrana, rejecting the application filed by petitioner under Section 319 Cr.P.C. for adding non-petitioner No.2 as accused in Sessions Case No.16/2007 (2/2007).

According to the facts of the case, upon complaint filed by Megha Ram before Police Station, Makrana on 11.12.2006, a case was registered for offences under Sections 302, 307, 323, 325, 302/34, 307/34 I.P.C. According to the allegations levelled in FIR, it was alleged that on 11.12.2006 when Hanuman Ram, Bhura Ram and Ratna Ram were returning to their village on motor-cycles, the accused persons Deva Ram, Oma Ram and Seva Ram hit their motorcycles by Jeep being registration No.RJ21-C-3431. Due to which, they fell down, thereafter, accused-persons caused injuries badly by iron-rod (sariya) and sharp-edged weapons.

Upon this complaint, an FIR No.458/2006 was registered. After usual investigation, challan was submitted before the competent Court only against Deva Ram, Oma Ram and Seva Ram and after committal, the trial Court proceeded to record statement of prosecution witnesses.

After recording statement of twenty one witnesses, an application under Section 319 Cr.P.C. was moved and it was prayed that in the statement of PW-14Bhura Ram, there is allegation against non-petitioner No.2 with regard to inflicting injury upon leg by iron-road but the police did not file charge-sheet against him. Therefore, upon the statement of PW-14 Bhura Ram, it was prayed that non-petitioner No.2 may be added as accused and be tried with other accused-persons.

Learned trial Court after hearing both the parties rejected the application vide impugned order dated 22.8.2007.

learned counsel for the petitioner vehemently argued that at the stage of under Section 319 Cr.P.C., if material evidence comes on record, then, trial Court is under obligation to exercise its discretionary power and require to add person as accused for the purpose of trial against whom specific allegations are there. Learned counsel for the

petitioner vehemently submitted that as per the statement of injured PW-14 Bhura Ram, which is corroborated by medical evidence. The non-petitioner No.2 was to be arrayed as accused in this case but the learned trial Court has erroneously rejected the application filed under Section 319 Cr.P.C. Hence, it is prayed that the order impugned may be quashed and the learned trial Court may be directed to take cognizance against non-petitioner No.2 against whom specific allegations are levelled by PW-14 Bhura Ram.

On the other hand, learned counsel for non-petitioner No.2vehemently argued that power under Section 319 Cr.P.C. is discretionary power and it is the duty of the trial Court to exercise those discretionary powers judiciously and in this case learned trial Court after considering entire aspect of the matter has refused to accept application under Section 319 Cr.P.C. which there is no error. There is no corroborative evidence for which non-petitioner No.2 can be arrayed as accused, therefore, this petition deserves to be dismissed.

I have considered the rival submissions and perused the entire record of the case.

It is admitted position of the case that except statement of PW-14 Bhura Ram, there is no evidence with regard to inflicting any injury by non-

petitioner No.2. Likewise name of non-petitioner No.2 was not even mentioned in the FIR though FIR was filed by eye witness Megha Ram – PW-16. Likewise in the statement of PW-14 recorded under Section 164 Cr.P.C. (Ex.44), there is no allegations against non-petitioner No.2. Similarly, in none of the statement except statement of PW-14 Bhura Ram, any allegations are levelled against non-petitioner No.2, therefore, in view of the judgement of Hon'ble Supreme Court reported in 2006 (2) CJ (SC) Cr. 360 (Lok Ram Vs. Nihal Singh & Anr.), the learned trial Court has rightly rejected the application under Section 319 Cr.P.C. The Hon'ble Supreme Court in the aforesaid judgment has specifically observed in para-12 that power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it. And if it is satisfied that any person other than accused has committed an offence he is to be tried together with the accused. Likewise in another judgment reported in 2007 (3) RLW (SC) 2599, the Hon'ble Supreme Court has held that at the time of application under Section 319 Cr.P.C., the trial Court can add such persons as accused on the basis of evidence adduced before it and not on the basis of material available in the charge sheet or the case diary because such materials contained in the charge sheet or the case diary do not constituted evidence.

After considering evidence of present case and perusing the impugned order in my opinion, the learned trial Court has rightly refused to exercise its power under Section 319 Cr.P.C. for adding non-petitioner No.2 as accused because there is no evidence on record for implicating non-petitioner No.2 in the case except the statement of PW-14 Bhura Ram though other witnesses are also eye witnesses but they are not corroborating the allegations of PW-14 Bhura Ram. Likewise in FIR no role was assigned to non-petitioner No.2 by eye witness PW-16 Megha Ram.

In these circumstances, in my opinion, the order passed by trial Court is in consonance with the law laid down by Hon'ble Apex Court in the above two judgments. Accordingly, this revision petition is dismissed.

(GOPAL KRISHAN VYAS), J .

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